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STATE FARM MUTUAL AUTOMOBILE  
7 INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 GREGORY BUONOCORE, an individual on  
behalf of himself and all others similarly  
12 situated,

13 Plaintiff,

14 v.

15 STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY; and DOES 1  
16 through 10 inclusive,

17 Defendants.

CASE NO. CV 08 0184 PJH

**[PROPOSED] ORDER GRANTING  
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY'S MOTION  
FOR JUDGMENT ON THE PLEADINGS  
[FED.R.CIV.P. 12(C)]**

JUDGE: The Honorable Phyllis Hamilton  
CTRM: 3  
DATE: August 6, 2008  
TIME: 9:00 a.m.

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19 Defendant State Farm's motion for judgment on the pleadings for plaintiff Buonocore's  
20 failure to state a claim pursuant to Federal Rule of Civil Procedure 12(c) came on regularly for  
21 hearing before this Court on August 6, 2008 at 9:00 a.m. in Courtroom 3, the Honorable Phyllis  
22 Hamilton presiding. All parties appeared through counsel. After full consideration of the  
23 parties' papers, the State Farm Mutual Automobile Insurance policy issued to Buonocore,  
24 Buonocore's settlement agreement and release with the third party motorist Ali Saremi with the  
25 admissions of Saremi incorporated therein, and the oral argument of counsel, this Court orders as  
26 follows:

27 IT IS HEREBY ORDERED that State Farm's motion for judgment on the pleadings for  
28 failure to state a claim is GRANTED.

1 All of the claims asserted by Buonocore in his complaint are dependent on his assertion  
2 that State Farm cannot seek reimbursement of its medical payments because Saremi has neither  
3 admitted liability nor been determined liable by a neutral fact finder, which Buonocore argues is  
4 a condition precedent to medical payment reimbursement. The Court finds that the settlement  
5 and release agreement with Saremi contains an admission of liability, that Saremi admitted  
6 liability in response to requests for admission that are incorporated in the settlement agreement,  
7 and that, by filing an underinsured motorist claim, Buonocore was required to allege and  
8 establish that Saremi was liable for Buonocore's bodily injury. Therefore, Buonocore has failed  
9 to allege a cognizable legal theory to support any of his claims for relief.

10 As an independent basis for dismissal, each of Buonocore's claims fails to state a claim  
11 for relief as a matter of law to the extent they challenge State Farm's right - as contained in the  
12 policy and authorized under California Insurance Code Section 11580.2(e) - to offset amounts  
13 previously paid to Buonocore as medical payments under Coverage C from any uninsured  
14 motorist arbitration award paid pursuant to Coverage U.

15 Buonocore's complaint is hereby dismissed with prejudice and State Farm is awarded its  
16 reasonable costs of suit.

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18 DATED:

19 \_\_\_\_\_  
20 HONORABLE PHYLLIS HAMILTON  
21 UNITED STATES DISTRICT JUDGE  
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